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10/579,052	05/11/2006	Joseph Dussaud	3952-84	1377
23117 7590 12/16/2008 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER				
NGUYEN, SON T				
ART UNIT		PAPER NUMBER		
3643				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/579,052

Applicant(s)

DUSSAUD, JOSEPH

Examiner

Son T. Nguyen

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-24 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 19 September 2008 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/5508)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the fibrous support sheet has the form of a pot, the bottom of the pot being an inwardly folded free end of the tubular member must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. **Claim 17** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "and/or" is vague and indefinite.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 1,2,5,7,8,10-15,19-24** are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis (GB 2290691A1) in view of Cohon (2117240).

For claim 1, Davis teaches a plant protection device comprising biodegradable tubular member (P) adapted to surround a plant to be protected, the tubular member being formed, of at least one tubular fibrous support sheet which is comprised of annual fibres (natural fibers from tree). In addition, Davis teaches that the sheet is treated for wet strength and water resistance (page 2, lines 15-16) but Davis's treated wet strength and water resistance is disclosed as parchmented or vulcanized to impart water resistance and transparency thereto sufficient to allow for photosynthesis of the protected plant within the tubular member.

Cohon teaches parchmented and transparent sheet made out of paper (page 1, right column, lines 20-28) for use in a variety of covering application such as cover for

flower pots (page 1, left column, lines 5,50). It would have been obvious to one having ordinary skill in the art at the time the invention was made to parchmentize as taught by Cohon the sheet of Davis, since parchmentizing paper product is known to make the paper product stronger and resistance to water.

For claim 2, Davis as modified by Cohon (emphasis on Davis) teaches wherein the tubular member comprises two concentric tubes E,F.

For claim 5, Davis as modified by Cohon is silent about wherein the fibrous support is comprised of at least 20 % by weight of annual plant fibres. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the fibrous support of Davis as modified by Cohon be comprised of at least 20 % by weight of annual plant fibres, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect (depending on how slow or fast the user wishes the support to decompose or deteriorate and depending on how light or heavy the user wishes the protection device to be) is achieved involves only routine skill in the art. Note that the percentage as claimed by Applicant has no criticality because it depends on various factor of desired effect one wishes the protector to have for the different types of plant or tree being covered.

For claim 7, Davis as modified by Cohon is silent about wherein the parchmentized or vulcanized fibrous support has a grammage of 50 - 250 g/m². It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the parchmentized or vulcanized fibrous support of Davis as modified by

Cohon with a grammage of 50 - 250 g/m², since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect (depending on how slow or fast the user wishes the support to decompose or deteriorate and depending on how light or heavy the user wishes the protection device to be) is achieved involves only routine skill in the art. Note that the grammage range as claimed by Applicant has no criticality because it depends on various factor of desired effect one wishes the protector to have for the different types of plant or tree being covered.

For claim 8, Davis as modified by Cohon is silent about wherein the support sheet has a transparency of between 15 % and 25 %. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the support sheet of Davis as modified by Cohon with a transparency of between 15 % and 25 %, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect (depending on how much light transmission the user wishes to transmit to the plant being covered) is achieved involves only routine skill in the art. Note that the percentage range as claimed by Applicant has no criticality because it depends on various factor of desired effect one wishes the protector to have for the different types of plant or tree being covered.

For claim 10, Davis as modified by Cohon (emphasis on Davis) teaches wherein the parchmented or vulcanized fibrous support is spirally wound to form the tubular member (page 2, lines 19-21).

For claims 11 & 13, Davis as modified by Cohon (emphasis on Davis) teaches wherein the tubular member comprises 2 – 15 superposed (as in lamination) parchmented or vulcanized support sheets, and wherein a lower face of each of the support sheets is coated with an adhesive (page 2,lines 11-17).

For claim 12, Davis as modified by Cohon (emphasis on Davis) teaches wherein the tubular member has a diameter of at least 120 mm (page 3,lines 25-27).

For claim 14, Davis as modified by Cohon is silent about wherein the tubular member has a grammage of 300-400 g/m². It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the tubular member of Davis as modified by Cohon with a grammage of 300-400 g/m², since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect (depending on how slow or fast the user wishes the support to decompose or deteriorate and depending on how light or heavy the user wishes the protection device to be) is achieved involves only routine skill in the art. Note that the grammage range as claimed by Applicant has no criticality because it depends on various factor of desired effect one wishes the protector to have for the different types of plant or tree being covered.

For claim 15, Davis as modified by Cohon (emphasis on Davis) teaches wherein the adhesive consists exclusively of biodegradable polymers chosen from the group consisting of polyvinyl alcohol (page 5,line 18), natural rubber, starch, gelatine, polysaccharides, arabic gum, alginate and carboxymethyl cellulose.

For claim 19, Davis as modified by Cohon teaches a process for protecting a growing plant which comprises positioning the plant protection device of claim 1 around the plant (see fig. 1 of Davis).

For claims 20-21, Davis as modified by Cohon is silent about wherein the fibrous support is comprised of at least 50 % or at least 75 % by weight of annual plant fibres. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the fibrous support of Davis as modified by Cohon be comprised of at least 50 % or at least 75 % by weight of annual plant fibres, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect (depending on how slow or fast the user wishes the support to decompose or deteriorate and depending on how light or heavy the user wishes the protection device to be) is achieved involves only routine skill in the art. Note that the percentage as claimed by Applicant has no criticality because it depends on various factor of desired effect one wishes the protector to have for the different types of plant or tree being covered.

For claim 22, Davis as modified by Cohon is silent about wherein the parchmented or vulcanized fibrous support has a grammage of 100 g/m². It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the parchmented or vulcanized fibrous support of Davis as modified by Cohon with a grammage of 100 g/m², since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect (depending on how slow or fast the user wishes the

support to decompose or deteriorate and depending on how light or heavy the user wishes the protection device to be) is achieved involves only routine skill in the art. Note that the grammage range as claimed by Applicant has no criticality because it depends on various factor of desired effect one wishes the protector to have for the different types of plant or tree being covered.

For claim 23, Davis as modified by Cohon is silent about wherein the support sheet has a transparency of 20%. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the support sheet of Davis as modified by Cohon with a transparency of 20%, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect (depending on how much light transmission the user wishes to transmit to the plant being covered) is achieved involves only routine skill in the art. Note that the percentage range as claimed by Applicant has no criticality because it depends on various factor of desired effect one wishes the protector to have for the different types of plant or tree being covered.

For claim 24, Davis as modified by Cohon is silent about wherein the tubular member has a grammage of 350-360 g/m². It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the tubular member of Davis as modified by Cohon with a grammage of 350-360 g/m², since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect (depending on how slow or fast the user wishes the support to decompose or deteriorate and depending on

how light or heavy the user wishes the protection device to be) is achieved involves only routine skill in the art. Note that the grammage range as claimed by Applicant has no criticality because it depends on various factor of desired effect one wishes the protector to have for the different types of plant or tree being covered.

6. **Claims 3,4** are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis as modified by Cohon as applied to claim 1 above, and further in view of Bugler et al. (6481155).

Davis as modified by Cohon is silent about a cut in the tubular member along the entire length thereof.

Bugler et al. teach a plant protector a tube support with a slot or cut 2 along the entire length of the tube support. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a cut as taught by Bugler et al. in the tube of Davis as modified by Cohon in order to provide easier installation/removal of the tube from the plant. Note that the cut of Bugler et al. is done before covering the tree with the protector so as to allow easy installation/removal of the protector.

7. **Claim 6** is rejected under 35 U.S.C. 103(a) as being unpatentable over Davis as modified by Cohon as applied to claim 1 above, and further in view of Andersen et al. (6200404).

Davis as modified by Cohon is silent about wherein the fibrous support comprises unbleached or bleached vegetable fibres obtained from coniferous or deciduous plants, synthetic fibres, and mixtures thereof.

Andersen et al. teach conventional paper products made with vegetable fibers such as coniferous or deciduous plants (col. 11, lines 34-55,col. 24,lines 21-25). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ unbleached or bleached vegetable fibres obtained from coniferous or deciduous plants as taught by Andersen et al. as the preferred fibers in the protector of Davis as modified by Cohon, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

8. **Claim 9** is rejected under 35 U.S.C. 103(a) as being unpatentable over Davis as modified by Cohon as applied to claim 1 above, and further in view of Reese (4341039).

Davis as modified by Cohon is silent about wherein the vulcanized or parchmented fibrous support includes at least one of fungistatic, fungicidal and bactericidal repulsive products sprayed to a surface thereof.

Reese teaches a plant protector comprising a tube support that is covered with a fungicide (col. 2, lines 66-68). It would have been obvious to one having ordinary skill in the art at the time the invention was made to spray the tube of Davis as modified by Cohon with a fungicide as taught by Reese in order to provide an undesirable environment for mildew and fungus (col. 2, lines 65-67, col. 3, lines 1-2 of Reese).

9. **Claims 16,17** are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis as modified by Cohon as applied to claim 1 above, and further in view of Achim (GB 2104366A).

Davis as modified by Cohon is silent about wherein the fibrous support sheet comprises a foldable corrugated sheet, wherein the corrugated sheet is glued between two parchmentized and/or vulcanized sheets.

Achim teaches a plant protection device in the form of a tube (see fig. 3), characterised in that it consists of at least one parchmentized or vulcanized fibrous support in the form of a sheet containing annual fibres (made out of paper fibers), the device being biodegradable. In addition, the fibrous support is a folding corrugated sheet (page 1, lines 60-65,87-99) and the corrugated sheet is glued between two parchmentized and/or vulcanized sheets (page 1, lines 66-72). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a foldable corrugated sheet, wherein the corrugated sheet is glued between two parchmentized and/or vulcanized sheets as taught by Achim in place of the sheets of Davis as modified by Cohon, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use (stronger protector due to the corrugation in the material) as a matter of obvious choice.

10. **Claim 18** is rejected under 35 U.S.C. 103(a) as being unpatentable over Davis as modified by Cohon as applied to claim 1 above, and further in view of Haysler et al. (3132791).

Davis as modified by Cohon is silent about wherein the fibrous support sheet has the form of a pot, the bottom of the pot being an inwardly folded free end of the tubular member.

Haysler et al. teach a flower pot that can be used for a protector (the pot is considered a protector because it does protect the plant's bulb or roots), the pot comprises tubular member that is folded at its free end to create a pot. It would have been obvious to one having ordinary skill in the art at the time the invention was made to fold the tubular member of Davis as modified by Cohon into a pot by inwardly folding the free end as taught by Haysler et al. in order to create the protector into a pot if one wishes to use the protector as a pot.

Response to Arguments

11. Applicant's arguments with respect to claims 1-19 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Son T. Nguyen/
Primary Examiner, Art Unit 3643